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November 26, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 24, 2007

Case Number: TSO-0518

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (hereinafter "the individual") for an access authorization. The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's access authorization should be restored. For the reasons detailed below, it is my decision that the individual's access authorization should not be restored.

I. BACKGROUND

The individual has been employed at the DOE site since 1981. DOE Exhibit #2. On March 29, 2007, the DOE issued a notification letter to the individual. Attached to the notification letter was a statement entitled "Information creating a substantial doubt regarding eligibility for an Access Authorization" (hereinafter referred to as the "information statement").

The information statement indicates that the individual filed for bankruptcy in 1987, 1997 and 2004. The 1987 and 1997 bankruptcies were filed under Chapter 7 of the bankruptcy code, and the requirements of the bankruptcy court were all properly discharged. The 2004 bankruptcy was filed under Chapter 13, and the individual is currently in compliance with a 3 year payment plan. The information statement indicates that the three bankruptcy filings indicate a pattern of financial irresponsibility that raise a security concern under Criterion L. 10 C.F.R. §710.8.

The information statement also indicates that during several personnel security interviews (PSI) held between 1987 and 2005, the individual was questioned about her financial situation. During those interviews, the individual stated that, in the future, she would live within her means and would satisfy her financial obligations. The information statement indicates that the individual's failure to follow through on those statements also indicate a Criterion L security concern.

The notification letter informed the individual that she was entitled to a hearing before a hearing officer in order to respond to the information contained in the notification letter. The individual, who was represented by counsel, requested a hearing. I was appointed to serve as the hearing officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (the hearing).

## II. HEARING TESTIMONY

### A. Bankruptcy Expert

The bankruptcy expert is a local attorney who has practiced bankruptcy law for 25 years. He testified that the individual's attorney asked him to review the individual's three bankruptcy filings. Tr. at 45. He testified that the individual's first bankruptcy was filed in 1987. He testified that he worked on a large number of bankruptcies caused by the failure of a very large local company. He believes the individual's husband's statement that the 1987 bankruptcy was caused by that failure. He testified that the individual made all payments directed by the bankruptcy court and that the remainder of the individual's unsecured financial obligations was forgiven.

The individual's second bankruptcy was filed in 1997. The bankruptcy expert testified that the 1997 bankruptcy was caused by an investment partnership. The investment partnership sold cattle to the individual and numerous investors in the individual's region. Based on the fraudulent representation of the investment partnership the individual reported cattle tax losses. Those losses reduced her IRS tax obligations. Tr. at 47. The investment partnership was shut down by the IRS in the mid 1990s. At that time, all of the investors lost the money they had invested with the investment partnership. In addition the IRS required all the investors including the individual to amend all prior income tax returns that included cattle loss deductions generated by the fraudulent representations of the investment partnership. The IRS assessed penalties and interest on the increased tax obligations. Tr. at 48.

The bankruptcy expert testified that he did not know how much the individual invested in the cattle partnership or the increased income tax obligation that resulted when the individual refiled her income tax returns. However, he testified that the individual significantly reduced her tax obligation from the early 1980s through the mid 1990s. He testified that her 1997 bankruptcy schedule indicated a \$160,000 non-dischargeable obligation to the IRS. He testified that \$160,000 non dischargeable obligation would have been the increased tax obligation the individual owed the IRS on the date of the bankruptcy filing. Tr. at 52. That bankruptcy schedule also indicates a \$200,000 dischargeable debt owed to the IRS. The bankruptcy expert testified that the dischargeable debt would have been the interest and penalties assessed by the IRS on the increased tax obligation. The bankruptcy expert testified that at that time the \$200,000 in interest and penalties owed the IRS were dischargeable by a Chapter 7 bankruptcy, while the \$160,000 tax obligation was not. As a result of the sizable dischargeable obligation compared to the individual's income, the expert testified that the only reasonable course for the individual was a Chapter 7 bankruptcy. The result of the Chapter 7 bankruptcy filing was a forgiveness of the \$200,000 of interest and penalties.

The individual's third bankruptcy was filed in 2004. It was a Chapter 13 bankruptcy. In that proceeding, the individual agreed to repay all of her outstanding debts. Interest on her debts was forgiven. Tr. at 56. In order to fully satisfy those debts, the bankruptcy court required the individual to pay \$2,115 per month for 3 years. The expert testified that as of the date of the hearing the individual has made all her monthly payments. He testified that in 10 months she will complete her chapter 13 bankruptcy proceeding and will have fully discharged her debts. He testified that at that time she will have the \$2,115 she is paying to the bankruptcy trustee available for other uses. Tr. at 75.

The bankruptcy expert testified that the individual has obtained two low-limit credit cards while in bankruptcy. She currently has outstanding balances that are a few hundred dollars above the \$500 and \$650 credit limits on those cards. Tr. at 70. He testified that the interest rate on those cards would be at least 18%. He also testified that there have been 10 insufficient checks written on the individual's account since her bankruptcy filing. These have all been for small amounts. Tr. at 71. He was asked if he thought the individual would continue her pattern of filing for bankruptcy in the future. He testified that he is not sure but that the solution is "to learn how to budget and have the self-discipline to stick to it. And it's hard for a lot of people in this country." Tr. at 73.

The bankruptcy expert concluded his testimony by indicating that "Of the individuals who see me because of financial problems, the [individual and her husband] would be responsible individuals." Tr. at 62. He also testified that he has looked at the individual's credit reports and the only new financial obligations were the two low-limit credit cards. Tr. at 66.

#### B. The Individual's Co-Workers

The individual's direct supervisor testified that he met the individual in December 2005 when he started working at the site. Tr. at 8. He testified that the individual is "very reliable and one of my best employees, based on her experience, her knowledge of what she does, and so on." Tr. at 10. He testified that the individual has told him about some of her past financial problems, and he believes she is working toward "closure of her financial situation." Tr. at 13.

A co-worker testified that she has known the individual for 20 years. Tr. at 17. Most of her contact with the individual is during work hours. However, she occasionally socializes with the individual. Tr. at 15. She testified the individual does not consume alcohol and is responsible both on and off the job. Tr. at 16. She testified that "[The individual] was always a real stickler for the rules. And if something was not right she was the first one to say, 'Hey, it says we're supposed to do it this way,' and then she would make sure it would be done." Tr. at 17. She indicated she could always count on the individual to take on responsibility and complete her assignments.

The co-worker also testified that during the last 20 years the individual occasionally has told her about her bankruptcies, financial difficulties and medical problems. Tr. at 17-18. She described her understanding of the individual's financial problems. She believes that the individual became involved in a financial scam in the late 1980s and that her recent problems were caused by health problems. Tr. at 19. She indicated that the individual has just faced a number of unfortunate situations. Tr. at 20. She believes that the individual has gotten smarter about her financial affairs. She believes that the individual has a budget and is working hard to pay off all her debts through the chapter 13 bankruptcy. Tr. at 21. She testified that she has provided the individual with financial software and she has talked with the individual about budgeting. Tr. at 24.

#### C. The Individual's Husband

The individual's husband testified that he has been married to the individual for 32 years. They have two children ages 32 and 28. Tr. at 27. The 28 year old daughter has lived at home most of her life. Their son

is married, has one child and lives in a nearby city. Tr. at 28. He testified that the individual does not consume alcohol and their marriage is strong. Tr. at 29 and 31.

He testified that the 1987 bankruptcy was caused by his loss of his job and a severe local recession that kept him from obtaining a new job for several years. Tr. at 76. He testified that his 1997 bankruptcy was caused by the cattle scam. Tr. at 77. He testified that the September 2004 bankruptcy was primarily caused by the individual's two surgeries in 2003. He testified that those surgeries reduced the individual's income to disability pay for 9 months. Tr. at 80-81.

He testified about the family's finances. His take home salary is \$3,200 per month. Tr. at 35. He is currently making the \$2,115 payment to the bankruptcy trustee to pay the 2004 debts. Tr. at 37. The remainder of his \$3,200 take home salary goes into a joint fund which is used to pay household expenses. He indicated their largest expense is their home mortgage, \$1,260 per month. Tr. at 30. He was asked if he had any outstanding debts other than those included in the 2004 bankruptcy. He indicated "not that I know of." Tr. at 91.

The individual's husband testified that he has never had any education about budgeting or financial planning. Tr. at 89. However he indicated he helped prepare the monthly budget which is set forth at pages 278-280 of the individual's documentary submission (hereinafter "Individual's Exhibits"). The budget indicates approximately 25 categories including essentials such as rent, electricity, phone, gasoline, medical and categories that are more elective such as dining out, donations and gifts. The individual's husband testified that he and the individual estimated their monthly expenses in each of the categories by reviewing their check book. Tr. at 41. The total budgeted monthly expenses were \$6,484. That amount includes the \$2,115 payment to the bankruptcy trustee. Individual's Exhibit at 280. The individual's husband did not provide any specifics about the budget. However, he testified that the budget development process permitted him to better understand the amount he spends for various activities. Tr. at 41.

#### D. The Individual

The individual testified that she has been married for 32 years and has lived in the same area for 25 years. She does not consume alcohol or gamble. Tr. at 107. She testified about the circumstances surrounding her 2004 bankruptcy. In 2003 she had surgery for carpal tunnel syndrome and a few months later she had knee surgery. Tr. at 108. As a result of those surgeries she was out of work for 9 ½ months. During that period she received disability insurance payments equal to 60% of her salary. Tr. at 109. The checks were sent on an irregular schedule, making it difficult for her to manage her finances. Tr. at 109. She also testified that during 2003 she had a number of surgery-related medical bills that were not covered by her insurance. She was unable to provide an estimate of those uncovered medical expenses. Tr. at 112.

The individual testified at the time of the 2004 bankruptcy, their largest outstanding obligation was \$10,963 that was owed to the IRS from the 1997 bankruptcy. Tr. at 113. She and her husband also had credit and unsecured debts of \$55,889. Individual's Exhibit at 55. They filed a Chapter 13 bankruptcy and agreed to repay the principal owed to the IRS and to their other creditors. As of the date of the hearing the individual had made all required monthly payments, satisfying 73% of her outstanding debts. Tr. at 114 and Individual's Exhibit at 5. She testified that the schedule of expenses that she prepared for the bankruptcy court is very similar to her current estimate of her expenses provided on page 278 of her documentary

submission. She did not testify about the details of the budget. However, she testified that since the 2004 bankruptcy, she and her husband have lived within their means and have made the required payments to the bankruptcy court. She believes this pattern demonstrates a pattern of financial stability. Tr. at 116.

The individual testified that in 2007 she spent a considerable amount of time getting the credit reporting agencies to correct errors on her reports. The individual did not testify about the details of the credit reports. However, she believes her current credit reports are accurate. Tr. at 141. She believes that her persistence in working with the credit agencies to straighten out her credit report demonstrates that she has an understanding of the need to organize and manage her financial affairs.

The individual also believes that credit counseling is important and testified that she has tried to obtain such counseling. She contacted the credit counseling firm that her attorney recommended. However, she testified that the firm would not counsel her unless she agreed to bring in all of her bills. Since her bills were already listed in her 2004 bankruptcy she believed that was not the "proper type of actual counseling that I needed." Tr. at 118. She then went to another firm and was told about a 2 hour post-bankruptcy class. She took that class on line. Tr. at 119. She testified that she learned about setting goals and having a safety fund. Tr. at 119. She also testified that a friend gave her a copy of Quicken which she hopes to learn to use in the future to help her monitor family spending. Tr. at 120.

### III. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the hearing officer.

#### A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. Once a security concern has been raised, the standard in this proceeding places the burden of proof on the individual to bring forth persuasive evidence concerning his/her eligibility for access authorization. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (d).

This burden is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his/her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues.

In addition to his/her own testimony, the individual in these cases is generally expected to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the hearing officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 (1995).

#### B. Basis for the Hearing Officer's Decision

In a personnel security case under Part 710, it is my role as the hearing officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. §710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

### IV. ANALYSIS

The individual's inability to meet her financial obligations over an extended period clearly raises a security concern under Criterion L. The individual believes that by providing me a clear picture of her financial problems I will be able to conclude that her future behavior will meet the standards necessary to maintain an access authorization.

#### A. Bankruptcy Causes

The individual believes that she has shown that her first two bankruptcies were caused by factors outside of her control. The individual, her husband and the bankruptcy expert convinced me that the 1987 bankruptcy was related to the failure of the very large local company which caused a severe local recession. They also convinced me that a large number of people were defrauded by the cattle investment partnership, and entering into bankruptcy was the best way for her to achieve forgiveness of the \$200,000 IRS interest and penalty assessment which she would never been able to pay. Therefore, the individual has established one factor that mitigates the security concern caused by the 1987 and 1997 bankruptcies. As indicated below, I believe that in order to mitigate a financial irresponsibility security concern the individual must demonstrate more than that the bankruptcy was caused by factors outside of her control. Generally, the individual must also demonstrate a pattern of financial responsibility.

With regard to the 2004 bankruptcy, the only information provided by the individual was testimony that her two 2003 surgeries reduced her salary and resulted in medical expenses not covered by health insurance. The individual testimony indicated that she received approximately 60% of her salary for 9 ½ months and that she had unspecified medical bills. That testimony is insufficient in and of itself to convince me that these unforeseen events caused a family with a relatively high income to incur \$57,000 in unpaid debts. Furthermore, I believe the individual's failure to provide details about her 2004 financial obligations indicates an inability to understand financial matters and an unwillingness to admit that she cannot cope with unforeseen financial events. Therefore, I do not believe the individual has convinced me that the 2004 bankruptcy was caused by factors outside of her control.

## B. Future Financial Responsibility

The security concern here involves whether the individual will be financially responsible in the future. The individual has presented testimony on two factors that she believes demonstrates this. As discussed below, I am not persuaded by the evidence.

First, she believes that the testimony of the co-worker and supervisor show that she follows all rules and is a highly reliable employee. That testimony indicated that the individual is generally reliable. However, this has little, if any, relevance here. It did not provide any insights into the individual's financial situation or her ability to control her spending in the future.

Second, reason the individual believes that she will be financially stable because she and her husband are close to completing their current bankruptcy proceeding and they have a budget showing how they can live within their means. Individual's Exhibits at 277-82. If she maintains her expenditures at the levels specified in her budget, it appears she will not have future financial problems. However, there was no testimony that the individual has learned to control her spending. In fact the testimony at the hearing was to the contrary. The testimony at the hearing indicated that during the last two years there have been several returned checks written on the individual's account and that she has gone over her credit limit on her two credit cards. Therefore, the individual has not convinced me that she will limit her spending and meet her financial obligations in the future.

My concern that the individual will be unable to control her spending is supported by the individual's inability to discuss the details of her financial affairs. She did not provide any information on her actual spending during the last two years. Nor did she provide any information from her current creditors to indicate that she is current on her credit card, utilities and mortgage. Furthermore, when she discussed her past financial problems, she could not provide detail as to the specific amount of lost salary or her medical bills. She testified "I've never had a budget before, so this is all new to me." Tr. at 124. The individual has had only two hours of on line training in budgeting. She testified that "I learned a lot of different things on there, I really did. What myths and realities were." Tr. at 124. However, her need for additional financial training to help her understand and control her finances was obvious. Thus, the individual has provided no corroboration that supported her contention that she will be able to control her future spending.

Furthermore, I believe that the individual has difficulty organizing her financial affairs. She testified "I've been in a very busy position and you know . . . I sort of forgot. So, you know, if I was supposed to do this and that, maybe I should have had something in writing that said, you know, you will do this or this and whatever." Tr. at 136. The individual's testimony indicates she is not particularly concerned by her own failure to satisfy her financial obligations. She is satisfied with the bankruptcy expert's view that her financial situation is not unusual and that she is more responsible than many individuals that file for bankruptcy protection. The individual does not recognize that a repeated pattern of failing to meet financial obligations is inappropriate for an access authorization holder or that as an access authorization holder she is responsible for understanding her finances and assuring that she will be financially responsible in the future.

Given the circumstances here and in the absence of a substantial period of time demonstrating good financial judgment, I find that the individual has failed to mitigate the DOE's Criterion L security concern.

## V. CONCLUSION

I have concluded that the individual has not mitigated the DOE security concern under Criterion L of 10 C.F.R. §710.8. In view of the record before me, I am not persuaded that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wieker  
Hearing Officer  
Office of Hearings and Appeals

Date: November 26, 2007

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